IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

THE STATE OF RAJASTHAN. V. SMT. KALAWATI.

D. B. CRIMINAL APPEAL NO. 66/86

Under Section 374 (2), Cr.P.C.,against the Judgment dated 03.09.1985 passed by the learned District & Sessions Judge, Sri Ganganagar, in Sessions Case No.70/85.

DATE OF JUDGMENT :::: 18/09/2007

PRESENT

HON'BLE MR. JUSTICE BHAGWATI PRASAD

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr. J.P.S.Choudhary, P.P., for State – appellant.
Mr.Mridul Jain, for Respondent (s).

BY THE COURT: (PER HON'BLE BHANDARI, J.):-

Aggrieved by the judgment dated 03.09.1985, passed by the Sessions Judge, Sri Ganganagar, in Sessions Case No.70/84,

the State has preferred this appeal.

Prosecution case was started with regtistration of FIR by Police Station, Kotwali, Sri Ganganagar, on the receipt of requisition No.1894/84 from Medical Jurist, Government Hospital, Sri Ganganagar. Medical Jurist reported that dead body of Rani w/o. Omprakash, aged 22 years, was brought by Raja Ram s/o. Shivlal on 17.07.1984, at about 8.15 P.M. And the said dead body is lying in mortuary. The said requisition was received at 9.30 a.m. On 18.07.1984. The Police registered case under Section 302 of IPC.

After registration of case, police conducted usual investigation and, thereafter, filed challain in the Court of the Chief Judicial Magistrate, Sri Ganganagar, from where, the case was transferred to the District & Sessions Judge, Sri Ganganagar. The trial Court, thereafter framed charges against two accused vide its order dated 22.10.1984. Both the accused were charged under Section 302/34 of IPC. However, charge was denied by the accused and they claimed trial.

At the trial, prosecution produced nine witnesses and exhibited 14 documents to prove their case, whereas, in defence, statement of Sajjan Kumar was recorded and ten

documents were exhibited. Statements of accused were recorded under Section 313 of Cr.P.C. After consideration of the case, learned trial Court acquitted both the accused.

Aggrieved by the order of acquittal, the State has preferred this appeal against both the accused, but, during the pendency of appeal, accused Omprakash died on 15.04.1994 and, thus, State appeal against accused Omprakash abated.

Prosecution came with the case that deceased Rani D/o. Dharmpal married to accused Omprakash (now, dead). After marriage, Rani was living with her husband Omprakash and mother-in-law Kalawati in Dhanako-ka-Mohalla, Sri Ganganagar. Ram Prakash and Kurda Ram were having their houses, close to Omprakash's house. On 17.07.1984, at about 4 – 5 p.m., Omprakash and Kalawati abused Rani and both of them fought with her. It was seen by Ram Chandra and Kurda Ram, because they were fighting on the road, in front of Omprakash's house. Kurda Ram had tried to settle the dispute, but then Omprakash abused him and, thereafter, accused Omprakash and Kalawati pulled Rani in their residence and, after about half an hour, Omprakash and Kalawati came out from their house and called Omprakash's younger brother Pawan. Pawan was instructed by Omprakash to call Sajjan along with Rehadi. After half an hour,

Sajjan came with "Rehadi" and, thereupon, Rani was bought out and was placed on "Rehadi" and was covered by a quilt. Rani was unconscious at that time when Sajjan and Omprakash took her to the hospital. The further case of the prosecution is that Sajjan who was then called at "Saja Ram" by Dr.Rajendra Kumar Gupta informed the SHO regarding receipt of dead body of Rani and thereupon, the report was registered. At the initial stage, Sukhdev Singh, Sub-Inspector, visited hospital and on contacting Dr. Rajendra Kumar Gupta, it was found to be a suspicious case of death.

The learned Public Prosecutor urged that despite of availability of the direct evidence to connect both the accused with the crime, the trial Court acquitted them. It was submitted that not only two witnesses, namely, Ram Chandra (P.W.2) and Kurda Ram (P.W.3) supported prosecution case, but, even the statement of Dr. Rajendra Kumar Gupta was corroborating prosecution case, yet the trial Court disbelieved them to record acquittal of the accused. It was, thus, prayed that the judgment of the trial Court deserves to be set aside and accused Kalawati be convicted under the provisions of Section 302 of IPC and be sentenced, since accused Omprakash is no more.

Per contra, learned counsel for the accused submitted that

the learned trial Court had taken care of each and every aspect presented by the prosecution but finding not only contradiction in the evidence, but even the statements of the witnesses were not corroborating story brought by the prosecution, thus accused were rightly acquitted by the trial Court. It was, thus, prayed that the judgment of the trial Court calls for no interference as the same is well considered judgment.

We have considered the rival submissions of the learned counsel for the parties and scanned the matter carefully.

The prosecution has set out this case to be a case of murder by strangulation and, for this purposes, not only the statements of witnesses, but medical evidence was projected to support prosecution case. On the basis of the facts available on record, the learned trial Court first considered as to whether it is a case of homicidal or suicidal, after recording its finding that it is not a case of natural death of deceased Rani. The statement of Dr. Rajendra Kumar Gupta was considered at length to find out as to whether it can be said to be case of homicidal or not ? After detailed discussions, the Court came to the conclusion that no definite finding can be recorded to show that it is a case of suicidal or homicidal, because, on the basis of the material, it was not possible to draw a conclusion that it was a case of

suicidal but of homicidal as the deceased may have been strangulated, but then, according to the learned trial Court, it cannot be over ruled that it can be a case of suicidal by hanging, thereby considering both the aspects, the learned trial Court rightly concluded that no definite finding can be recorded. We have considered this aspect of the matter and taking note of the statement of Dr. Rajendra Kumar Gupta and the Post-Mortem Report, it cannot conclusively be said to be a case of suicidal but, at the same time, it cannot also be said to be a case of strangulation. The basic difference in between the strangulation and hanging was specified by Dr. Rajendra Kumar Gupta to show that it was a case of strangulation, because there was a fracture on hyoid bone and secondly, ligature mark was found to be transverse and was existing on the front of the neck and was then found to be below the thyroid cartilage. In cross-examination, Dr. Rajendra Kumar Gupta demolished his own version when confronted with the 20th Edition of Medical Jurisprudence by Modi. It was stated that the symptoms stated by him are not definite to draw a conclusion, because they are changeable and many times, due to internal changes in body, symptoms may be found same in both the cases. We find that the finding recorded by the trial Court cannot be said to be perverse and, in any case, even if we consider prosecution case to be of strangulation, then also, all the circumstances are

required to be taken note of. The prosecution has highlighted six circumstances to show that they were sufficient to prove their case beyond doubt. Following circumstances were shown by the prosecution to connect accused with the crime :-

(1) Accused were seen fighting with deceased Rani by Ram Chandra and Kurda Ram at about 4 – 5 P.M.

(2) After fighting with the deceased, accused took her inside their home.

(3) After half an hour, both the accused came out from their home and asked Pawan to call Sajjan with "Rehadi".

(4) After half an hour, Sajjan came along with "Rehadi" and Rani was taken to the hospital in unconscious condition.

(5) Rani was, thereafter, found dead.

(6) At the instance of the accused Omprakash, one rope was recovered.

The aforesaid six circumstances are considered in the light of the evidence available on record. For first circumstance, statements of PW 2 Ram Chandra and PW 3 Kurda Ram are required to be taken into consideration. PW 2 Ram Chandra repeated the same story as projected by the prosecution, but, in cross-examination, said witness stated that on the day of occurrence, i.e., 17.07.1984, Police was not there. He had not met with Police and it is only on 18.07.1984, at about 3.00 P.M., when he visited hospital along with deceased's relative, then he

met with the Police. There in the hospital, parents of deceased were also present, but he had not disclosed incident to them and, at that time, Kurda Ram was also accompanying him. It was further stated that even the parents did not ask him as to how deceased Rani died. He had stayed their for an hour. On 18.07.1984 itself, Police took him to police station from hospital and Kurda Ram was brought to police station from his residence. The Police retained them for three days and recorded their statements on 19.07.1984. The Police had beaten them and, thereafter, recorded their statements and they were further guided by the police and directed them to state the guided facts before the Magistrate. Said witness further stated that till 19.07.1984, he had not stated about the incident to police and the incident was given to the police only on 19.07.1984 when they were given good beating by the police, rather they were threatened also.

PW 3 Kurda Ram also repeated prosecution story in his examination-in-chief, but, in cross-examination, he had admitted that Police took him to police station on following day of occurrence, where he was beaten and threatened by the police for making a statement as was given to him. Witness further admitted that he had stated to Dharmpal that Omprakash and Kalawati fought with the deceased, but it was not stated that deceased Rani was, thereafter, taken in-side the residence.

However, PW 2 Ram Chandra has not corroborated this part of the story given by Kurda Ram (P.W.3). Ram Chandra (P.W.2) categorically stated that Kurda Ram (P.W.3) did not inform deceased's parents about the incident. Therefore, even statement of Kurda Ram becomes doubtful, more specifically the way even statements have been recorded under Section 161 of Cr.P.C. In our opinion, the statements of two witnesses are quite doubtful and, thus, not safe to rely. Even there are contradictions in their statements and the story given by one witness is not corroborated by the second witness.

So far as the second circumstance is concerned, i.e., same is also not found to be proved, because it is entirely co-related with the first circumstance, discussed above. In fact, the statement of PW 2 Ram Chandra is quite material. His statement shows that even Kurda Ram had not informed about the fact that deceased Rani was taken inside residence by the accused after fighting with her on the road, therefore, there is no corroborative evidence to support second circumstance.

So far as the third circumstance is concerned, that pertains to calling Sajjan through Pawan. The said circumstance again considered entirely on statements made PW 2 Ram Chandra, however, as we found their statements to be quite doubtful, thus cannot be relied upon to prove the third circumstance and otherwise also, it is not of much consequence to prove

prosecution case.

The fourth circumstance is taking Rani to hospital by Sajjan, however, again merely taking deceased to hospital by Sajjan does not create any circumstance to prove the prosecution case and the same is the position of fifth circumstance which, in fact, is not circumstance, because it is otherwise a fact that Rani was found dead.

The sixth circumstance is regarding recovery of rope, at the instance of accused Omprakash. The rope was recovered by Sukh Dev Singh on an information received through Ex.P-13 and otherwise, recovery was made through Ex.P-14. However, Sukh Dev Singh, in his statement, stated that the rope recovered at the instance of the accused, was not sent to the Forensic Science Lab. and, even it was not shown to Dr. Rajendra Kumar Gupta to find out as to whether the said rope can cause ligature mark of the kind found on the person of deceased Rani. Thus, all the six circumstances could not be proved by the prosecution to establish their case.

One material fact further pertains to extra-judicial confession by the accused. In the statement, Rulia Ram (P.W.8) stated that when he reached to the hospital, many caste persons were sitting there and in the hospital itself, Dharmpal (P.W.6) stated to the accused Kalawati and Omprakash that

they have strangulated deceased Rani. Omprakash and Kalawati felt sorry for their act. The time assigned by the said witness in making extra-judicial confession was 4 – 4.30 P.M., but, by the time Dharmpal had no reached to hospital, because Dharmpal came there at 5.30 P.M. It was admitted by the witness and that he and Dharmpal visited Kotwali to make report and stated all the facts, but the same were not recorded by the Police. However, Dharmpal had not corroborated this part of story stated by Rulia Ram (P.W.8), rather Sukh Dev Singh, who had taken report, has also demolished the version of Rulia Ram, when he stated that till the receipt of Post-Mortem Report, Omprakash and Kalawati had not made any confession before anyone. Thus, statement of Rulia Ram was not worth reliable.

The other part of the extra-judicial confession was shown at the place of Chandra Bhan, where it was stated that on 18.07.1984, accused visited Omprakash's place, where, in the presence of Dharmpal, Chandra Bhan, Rulia Ram and Banwari Lal, accused made extra-judicial confession. However, when the witness was confronted through Ex.P-6, i.e., his statement before the Magistrate, then, it was said that those facts were not stated there. Therefore, statement of Chandra Bhan became doubtful and so far as the statement of Dharmpal is concerned, he also repeated the same statement as were stated by witness

Chandra Bhan. But, in the cross-examination, the witness admitted that even after getting extra-judicial confession, they had not gone to make a report to the Police and it is only in next morning, Karm Chand, Banwari Lal, Rulia Ram and Chandra Bhan went to Kotwali to make a report, but the same was not taken. Banwarilal (P.W.7) also repeated the same story, but, in his cross-examination, it was admitted that even after knowing the fact, the matter was not reported to the Police immediately thereafter, but was given on following morning, but as to why the said report was not recorded by the Police, is not known to him. In that regard, statement of Sukh Dev Singh (P.W.9) is quite material which demolishes the entire prosecution story in regard to extra-judicial confession. Said witness stated that till receipt of post-mortem report, no witness stated that Omprakash and Kalawati made extra-judicial confessions in their presence, more so, on 18.07.1984, Dharmpal (deceased's father) met him in the hospital at around 5 – 5.45 P.M., but no report was made by said Dharmpal and even on 19.07.1984, Dharmpal met him, but again, no report was made, therefore, facts available on record clearly show that the statements of witnesses are doubtful and cannot be believed to establish extra-judicial confession by the accused.

In view of the facts considered above, we are of the

opinion that the prosecution could not prove its case. The prosecution could not even prove the incident that accused fought with deceased Rani at about 6 P.M. and, thereafter, she was taken inside their home. The best case of the prosecution was regarding recovery of rope, but again, prosecution could not connect the said rope with the incident and lastly, the prosecution could not prove a case of extra-judicial confession by the accused. Thus, for these reasons, we have no doubt that the finding recorded by the learned trial Court is proper and there exists no perversity therein so as to interfere in the finding of the trial Court in this appeal.

In view of the above, we are not inclined to accept this appeal and, accordingly, the same is dismissed. The judgment of the learned trial Court is accordingly affirmed.

(MUNISHWARNATH BHANDARI),J.(BHAGWATI PRASAD),J

scd.